



RIGHTS STUFF

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Woman Loses Sex Discrimination Case

Kenika Threatt began working for HUD as an economic-development specialist in Washington, D.C., in 2000. From the outset, she butted heads with two male supervisors, and in 2002, she filed an internal complaint charging them with sex discrimination. She said they constantly monitored her breaks and attendance, reassigned her duties to male co-workers and belittled and undermined her at staff meetings. HUD investigated and found the problems were based on a lack of clear delineation of her duties and not on sex discrimination.

Threatt filed a second internal complaint in 2002, alleging that her new male supervisor had discriminated against her in a variety of ways. HUD found some of her allegations to be untimely or too insignificant to investigate. HUD investigated her complaint that her supervisor had unfairly accused her of being absent without leave when she didn't show up for work one day. She and two male co-workers were scheduled to travel to an out-of-town conference later that day. The supervisor told all three of them they had to be at work that morning. None of them went to work that morning. The supervisor told them to submit leave requests for the hours they missed. The two men complied, but Threatt did not. So her supervisor designated the time as absence without leave.

HUD found that this was not related to her previous complaint and that her supervisor had a legitimate, nondiscriminatory reason for doing what he did.

Threatt sued, charging HUD with sex discrimination. While the lawsuit was pending, HUD fired her for work performance issues. She lost her lawsuit. The Court said that she failed to present any evidence linking her alleged mistreatment to her sex and failed to show she had been retaliated against for filing a complaint. The Court said that the fact that her supervisor might have belittled her in front of her co-workers, excessively scrutinized her work and subjected her to lengthy disciplinary meetings was not enough to establish retaliation. The Court said, "It is not enough that [her supervisor's] behavior may have created an unpleasant work environment; an adverse employment action for purposes of Title VII is one that significantly alters the terms and conditions of employment, and none of these alleged indignities resulted in a tangible job consequence." She was charged with two hours of being absent without leave, but the Court said that "this incident had such a negligible effect on her income that it cannot be considered adverse." The Court also said she was treated the same as the two male co-workers she traveled

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Ability To Fight Fires Essential Job Duty Of Fire Investigator

Gary Cremeens worked for the City of Montgomery, Alabama, fire department as a fire investigator. His job duties included investigating the causes and origins of fires, developing case files, interviewing witnesses, making arrests for fire-related crimes and making night club inspections. Fighting fires was not the "primary focus" of his job, but he was required to have fire suppression training and carry fire fighting gear. In an emergency, he would have to help fight fires.

In November of 2004, Cremeens was diagnosed with a heart condition called cardiomyopathy, an enlargement of part of his heart that results in inefficient pumping. After he had surgery, he returned to his fire investigator duties, but he could no longer fight fires. The chief accommodated him by not requiring him to fight fires.

A new chief took over two years later. He believed that Cremeens was planning to retire at the end of 2007, so he had another employee complete fire investigator training. That newly-trained employee needed to be actively investigating fires to retain his certification, so the new chief de-

cided to transfer Cremeens to the fire fighting suppression team. When Cremeens said he couldn't serve as a fire fighter, the chief transferred him to the training division and sent him for a fit-for-duty evaluation. The evaluation showed that he still could not fight fires. He was told he had to retire because they had no jobs for him. He retired and sued under the Americans with Disabilities Act.

Cremeens argued that the City failed to accommodate him, saying it could have retained him in the investigator job and not required him to fight fires. The question for the Court was, is the ability to fight fires an essential duty of a fire investigator? If it is, and if Cremeens could not do this essential function with or without a reasonable accommodation, he was not a "qualified individual with a disability."

A job duty is essential if it's one of the fundamental job duties of the position. Courts look at the employer's determination about which duties are essential, based on written job descriptions, how much time is spent on the duty in question, the consequences of not re-

quiring the employee to perform the duty in question, the terms of a collective bargaining agreement (if any), the work experience of people doing the job and the current experience of people in similar jobs.

The Court said that Cremeens failed to show that fighting fires is a non-essential function of the fire investigator position. It was listed as essential on the job description. It's expected that fire investigators be able to do this task in emergency situations or if ordered to do so. The consequences of not doing this duty are substantial: people could die. It's a highly specialized job duty requiring specialized training. The Court said that even though fire investigators rarely have to fight fires, it's still an essential duty. The City was not required to continue to accommodate him simply because it had done so for years.

The case is Cremeens v. City of Montgomery, Alabama, 2010 WL 3153721 (M.D. Alabama 2010). If you have questions about your rights and responsibilities under the ADA, please call the BHRC. ♦

Sex Discrimination Case (Continued from page 1)

with. Being fired is of course an adverse employment action, but the Court found her termination not to be related to her allegations of discrimination. She had

received negative evaluations and deadlines to improve over the years and she presented no evidence that she had improved

her work performance.

The case is Threatt v. Donovan, 2010 WL 2465145 (7th Cir. 2010). ♦



Walmart Fights Class Action Sex Discrimination Suit

In April of 2010, the Ninth Circuit Court of Appeals ruled 6 to 5 that a sex discrimination lawsuit against Walmart could proceed as a jumbo class action, with more than one million women joining the lawsuit. Walmart is now asking the U.S. Supreme Court to review that decision. By some estimates, if the class action is allowed to proceed and Walmart loses, it could be forced to pay a billion dollars or more in damages.

The case began nine years ago. At that time, Stephanie Odle was working for Sam's Club as an assistant store manager. She learned that the store manager had administered a promotion test to three male assistant store managers but not to her. She had earlier complained that a male assistant manager at a Sam's Club was paid \$23,000 a year more than she. The district manager told her, "Stephanie,

that assistant manager has a family and two children to support." She said she told him, "I'm a single mother, and I have a six-month-old child to support."

Odle's lawyer found out that although two-thirds of Walmart's employees were female at that time, only a third of the managers were female. Six other women joined the lawsuit, which has been growing in size and complexity ever since.

Walmart argues that class action lawsuits are not appropriate when the plaintiffs are seeking monetary damages. A lawyer for the women said that "Only the size of this case is unusual, and that is a product of Walmart's size and the breadth of the discrimination we documented. There is no 'too big to be liable' exception in civil rights cases."

Walmart denies it ever engaged in company-wide discrimination and noted that 46 percent of its assistant store managers are now female. One of the original plaintiffs, Betty Dukes, said that her pay went up almost 50% within the first year of her lawsuit. She now earns about \$31,000 a year and says she is still "struggling to get by." Another plaintiff, Deborah Gunter, said that she was denied promotions for which she was qualified and then fired when she complained.

It's not known when the Supreme Court will make its decision.

(Story based on "Walmart Asks Supreme Court to Hear Discrimination Suit," by Steven Greenhouse, New York Times, August 26, 2010, page B-1.) ♦

Special Needs Database For First Responders Announced

Mayor Mark Kruzan announced that the City of Bloomington has launched a voluntary on-line registration system so that citizens with disabilities can provide information which may help first responders (police, fire fighters or emergency medical technicians) provide the most appropriate service when citizens call 9-1-1 in emergencies.

The system, known as the

Bloomington/Monroe County Special Needs Database for First Responders, is designed to provide disability-specific information to first responders which may influence their actions in emergency situations. It can be vitally important for a first responder to have disability-specific information, such as whether a resident has a visual, hearing or mobility impairment or other needs that may influence how care is provided.

Individuals with disabilities or family members of people with disabilities who would like to be included in this database may register at www.bloomington.in.gov/specialneedsdispatch.

For more information please contact Barbara McKinney at 349-3429 or human.rights@bloomington.in.gov. ♦



Council For Community Accessibility Seeks Nominees For Annual Awards

The City Bloomington Council for Community Accessibility (CCA) is soliciting nominations for its annual awards ceremony taking place at the end of October. The awards will recognize individuals, businesses and organizations that make the community more accessible for people with disabilities. The CCA advocates on behalf of people with disabilities, promoting awareness and working to develop solutions to problems of accessibility in the community.

Award categories include:

- Kristin Willison Volunteer Service Award
- Business Service Award
- Professional and Community Service Award
- Housing Service Award
- Self-Advocacy Award and
- Mayor's Award.

Nomination forms are available in the Community and Family Resources Department in City Hall, 401 N. Morton Street, Suite 260, Bloomington, IN, or on-line at www.bloomington.in.gov/ccs. The deadline for submitting nominations is October 4.

For more information, contact Craig Brenner via e-mail at brennerc@bloomington.in.gov or by phone at 812-349-3471. ♦

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